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INTERCARRIER COMPENSATION (REPLY)

Issue I-5 **Implementation of the Commission's *ISP Remand Order***

The Petitioners continue to describe their proposals under Issue I-5 as contract language that implements the Commission's *ISP Remand Order*. A cursory reading reveals that, in large measure, that is not the case. Rather than *implement* the Commission's Order, the Petitioners have *rewritten* the Commission's Order, unabashedly modifying provisions with which they are dissatisfied and adding others not found in the *ISP Remand Order*. Verizon VA is willing to include appropriate implementation language in the Parties' interconnection agreements, but the Petitioners' proposals here would affirmatively modify the terms of that *Order* and must be rejected.

A. DISCUSSION

The CLECs insist on proposing contract language that conflicts with or exceeds the Commission's *ISP Remand Order*.

1. In Calculating The 3:1 Ratio, Access Traffic Must Be Excluded From The Universe Of Traffic Subject To Reciprocal Compensation.

In the *ISP Remand Order*, the Commission expressly declined to "describe the universe of traffic that falls within subsection [251](b)(5)."[1] Rather, by reference to traffic covered by § 251(g), the Commission identified traffic excluded from the § 251(b)(5) reciprocal compensation obligations.[2] Verizon VA has proposed contract language that mirrors the Commission's Order, and excludes only those categories of traffic that the Commission held

[1] *ISP Remand Order* at ¶ 34.

[2] *Id.* at ¶ 37, note 66.

should be excluded.[3] Indeed, the CLECs' own witnesses admitted that the traffic to be excluded from reciprocal compensation obligations includes interstate and intrastate access traffic, information access traffic, and optional extended local calling area traffic.[4] That is precisely the traffic that would be excluded under the terms of Verizon's proposal.

The Petitioners, however, propose contract language that effectively makes **all** traffic exchanged with Verizon VA that is not in excess of the 3:1 ratio eligible for reciprocal compensation – including traffic that their own witnesses admit should be excluded from the scope of the reciprocal compensation requirement.[5] In fact, the Petitioners' proposed language would subject various forms of interexchange (toll) traffic to reciprocal compensation, in lieu of the governing access charge regime. The Commission, however, has expressly rejected such an interpretation of § 251(b)(5).[6]

Consistent with the *ISP Remand Order,* the Commission should adopt Verizon VA's proposed contract language that identifies the traffic excluded from the reciprocal compensation obligations of § 251(b)(5).

2. The Rebuttable Nature Of The 3:1 Presumption Must Be Preserved.

Neither AT&T nor WorldCom propose contract language that would permit Verizon VA to rebut the 3:1 presumption in the manner expressly provided by the *ISP Remand Order.*[7] Thus,

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[3] *See* Verizon proposed WorldCom contract § 7.3 *et seq.*; Verizon proposed AT&T contract § 1.68(a); Verizon proposed Cox contract § 1.60(a).

[4] Tr. 1654-56; 1689.

[5] *See* WorldCom's proposed contract § x.4; Cox's proposed contract § 5.7.7.3(a); AT&T's proposed contract §§ 1.51 and 2.1.

[6] *ISP Remand Order* at ¶ 37, note 66 ("we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access charge regulations ...."); *see also PA (Sprint/Verizon) Arbitration Order* at 47; *MD (Sprint/Verizon) Arbitration Order* at 23-24.

[7] Tr. 1658-59, 1690.

the CLEC-proposed contracts would make the 3:1 presumption absolute. The Commission should reject this attempt to impose upon Verizon VA contract terms that directly conflict with the Commission's Order.[8]

3. The "Mirroring Requirement" Is The Only Prerequisite Set By The Commission For Implementing The New Interim Compensation Mechanism For ISP-Bound Traffic.

In the *ISP Remand Order,* the Commission provided that the rate caps for ISP-bound traffic adopted there apply "if an incumbent LEC *offers* to exchange all traffic subject to § 251(b)(5) at the same rate."[9] This so-called "mirroring obligation" is the ***only*** prerequisite established by the Commission to the implementation of the new compensation mechanism.

AT&T and WorldCom, however, propose that Verizon VA satisfy three prerequisites of their own creation before implementing the Commission's new compensation mechanism:

a. Verizon must "request[] that ISP-bound traffic be treated at the rates specified in the *ISP Remand Order.*"[10]

b. Verizon VA must "offer[] to exchange all traffic subject to the reciprocal compensation provisions of § 251(b)(5) with LECs, CLECs, and CMRS providers" at rates equal to the rate caps specified in the *ISP Remand Order.*[11]

c. Verizon VA must pay "all past due amounts owed to AT&T for the delivery of ISP-bound traffic prior to June 14, 2001."[12]

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[8] In its brief, WorldCom concedes that language preserving the rebuttable nature of the 3:1 presumption is appropriate. WorldCom Brief at 74, footnote 3.

[9] *ISP Remand Order* ¶ 89 (emphasis added, footnote omitted).

[10] AT&T proposed contract § 2.2.3(a); WorldCom proposed contract § x.3(a) ("Prerequisite A").

[11] AT&T proposed contract § 2.2.3(b); *see also* WorldCom proposed contract § x.3(b) ("Prerequisite B").

[12] AT&T proposed contract § 2.2.3(c); *see also* WorldCom proposed contract § x.3(c) ("Prerequisite C").

Because the Petitioners agree that Verizon VA has "requested" that ISP-bound traffic be treated at the rates specified in the *ISP Remand Order*, and thus satisfied their Prerequisite A, there is no point in including such language in the interconnection agreement.[13] Moreover, "requesting" the rates in the *ISP Remand Order* is not a prerequisite that the Commission established to begin with, so the Petitioners' proposed language should be rejected for that reason as well.

The proposed Prerequisite B, on the other hand, at most would merely incorporate the so-called "mirroring requirement" of ¶ 89 of the *ISP Remand Order*.[14] AT&T agrees that Verizon already has satisfied the Commission's requirement to "offer" to exchange section 251(b)(5) traffic at the capped rates adopted in the *Order*.

In contrast, WorldCom argues that Verizon VA should be allowed to satisfy the requirement to "offer" to exchange traffic in the manner contemplated by the *ISP remand* Order only by filing a tariff with the Virginia Commission.[15] This flatly contradicts the terms of the *Order* itself, and is contrary to the Commission's own explanation of this requirement to the D.C. Circuit.[16] The simple fact is that Verizon offered to exchange § 251(b)(5) traffic at rates equal to the Commission-mandated rate caps for ISP-bound traffic in its May 14 Industry Letter.[17] Indeed, certain carriers have accepted that offer. Because Verizon has satisfied the

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[13] Tr. 1661, 1679, 1868-69.

[14] Tr. 1868; *see* Verizon Ex. 55.

[15] *See* Tr. 1866-67.

[16] *WorldCom, et al. v. FCC*, Brief of the FCC at 58 ("When an ILEC negotiates a new agreement with a CLEC and chooses to avail itself of the rate and growth caps that the FCC established for Internet-bound traffic, the *Order* requires the ILEC to offer to exchange non-Internet-bound traffic at the same rates. In response to the offer, the CLEC may agree; thereby resolving that aspect ***of the negotiation*** or the CLEC may decline the offer. . . .") (emphasis added).

[17] Verizon Ex. 55; Tr. 1863-64.

mirroring obligation set forth in the *ISP Remand Order,* no purpose would be served by including the Petitioners' proposed language on their Prerequisite B and it should be rejected.[18]

Finally, the proposed Prerequisite C is nothing more than an attempt to hold Verizon VA hostage over historical billing disputes.[19] The Commission's Order provides no support for the notion that ILECs must settle such past disputes on terms dictated by the CLECs before implementing the new intercarrier compensation mechanism. These past billing disputes arise under the **existing** interconnection agreements between the Parties, not the agreements being arbitrated in this proceeding.[20] As such, those disputes should be resolved in accordance with the dispute resolution mechanism provided for in the existing agreements.[21] There is no legitimate basis to roll those disputes into the new interconnection agreements, and it would do nothing to resolve the underlying dispute. As the Staff pointed out, even with the Petitioners' proposed language, the Parties would have to resolve, in a separate proceeding, what, if anything, Verizon VA owed as an amount "past due."[22]

These three prerequisites would not facilitate the implementation of the Commission's *ISP Remand* Order; instead, they would delay it. The Commission has stated clearly its intent to "implement an interim recovery scheme that . . . **moves aggressively** to eliminate arbitrage

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[18] If the Commission feels that language memorializing the "mirroring obligation" should be included in the Parties' interconnection agreements, then it should be phrased as a "Whereas" clause to reflect the fact that Verizon VA has already satisfied its obligation.

[19] Tr. 1836 ("MS. PREISS: In other words, [the way] we should interpret the contract language WorldCom is proposing is Verizon should pay up the amount that WorldCom contends is past due in order to avail itself of the lower rates in the ISP Remand Order. MR. BALL: Yes.").

[20] Tr. 1665, 1685.

[21] Tr. 1666, 1685.

[22] Tr. 1834-37. Verizon VA does not owe any past due amounts to AT&T or WorldCom for reciprocal compensation under their existing contracts. To the extent that AT&T or WorldCom seek to have those prior disputes resolved, however, the respective agreements provide a mechanism to do just

(continued . . .)

opportunities presented by the existing recovery mechanism" for ISP-bound traffic.[23] Accordingly, the Petitioners' language regarding Prerequisites A, B and C are merely thinly disguised attempts to generate contrived excuses for further delaying implementation of the Commission's *Order* and should be rejected.

4. WorldCom and AT&T Propose Language That Would Expand The Body Of ISP-Bound Traffic Eligible For Compensation.

In establishing the formula for calculating the 2001 annual growth cap, the Commission expressly limited the total number of minutes of ISP-bound traffic for which a LEC may receive compensation annually to: "a ceiling equal to, on an annualized basis, the number of ISP-bound minutes **for which that LEC was entitled to compensation** under that agreement during the first quarter of 2001, plus a ten percent growth factor."[24]

WorldCom and AT&T attempt to expand that growth cap by deleting the qualifying phrase "for which that LEC was entitled to compensation" when referring to ISP-bound traffic eligible for compensation.[25] Instead, they propose that ***all*** ISP-bound traffic originating on Verizon VA's network and delivered to the ISP by the CLEC should be included in the calculation of the growth cap ***whether or not such traffic volumes were entitled to compensation***.[26] The *ISP Remand Order* makes it clear that only ISP-bound traffic for which the CLECs were entitled to compensation may be counted toward the 2001 growth cap, not the "total number of minutes of use for ISP-bound traffic" as AT&T and WorldCom suggest.

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that. Neither of these parties has lifted a finger to take the steps for dispute resolution specified in their respective contracts.

[23] *ISP Remand Order* at ¶ 7 (emphasis added).

[24] *Id.* at ¶ 78 (emphasis added).

[25] *See* WorldCom's proposed contract § x.5; AT&T's proposed contract § 2.3.

[26] *Id.* WorldCom and AT&T rewrite the Commission's growth cap for 2002 in a similar manner.

5. The Contract's General Change Of Law Sections Are Adequate To Address Any Change of Law Relating To The *ISP Remand Order.*

In each interconnection agreement, the Parties have agreed to include a general change of law provision which provides that, whenever any change of law materially affects a term of the agreement, the Parties will renegotiate, in good faith, the affected provisions. If the Parties are not able to agree on mutually acceptable new or revised terms, either Party may pursue its available remedies under the agreement.

The CLECs offer no explanation as to why a future change of law regarding compensation for ISP-bound traffic should not be addressed under these general change of law clauses. Instead, they purport to predict what the future applicable law will be with regard to compensation for ISP-bound traffic and propose contractual language that could well be at odds with what a reviewing court may order, should one ever choose to modify the *ISP Remand Order*. For example, AT&T proposes that, "At such time as the ISP Remand Order is stayed, reversed or modified, then (1) ISP-bound traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement. . . ."[27] Language such as this should be rejected because if the law does change, it is up to the court, not AT&T, to decide whether the change will be given retroactive effect.

Similarly, AT&T and WorldCom seek to give themselves the broadest of opportunities to evade the Commission's interim compensation mechanism by proposing language that causes ISP-bound traffic to be treated as § 251(b)(5) reciprocal compensation traffic after ***any*** modification to the *ISP Remand Order*. For example, if the D.C. Circuit were to disagree with a

[27] AT&T's proposed contract § 2.5. WorldCom proposes a similar retroactivity clause, triggered by an unrestricted right to void contract terms after "any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in part." WorldCom's proposed contract § x.6.

single, discrete aspect of the Order, it could remand that portion of the Order to the Commission without upsetting the balance of the interim compensation system put in place. Under the AT&T or WorldCom proposed language, however, that partial remand would trigger contract language that converted all ISP-bound traffic to § 251(b)(5) traffic, retroactive to the effective dates of the agreements.

In conclusion, the Commission should reject the Petitioners' attempts to revise or expand those portions of the *ISP Remand Order* with which they are dissatisfied. To the extent the Parties' interconnection agreements require language to facilitate the implementation of that Order, the contract language must track the Order itself, not conflict with it.

Issue I-6 Virtual Foreign Exchange Traffic

The Petitioners propose a plan by which they may misuse telephone numbers to make toll calls look like local calls and attempt to justify that plan by saying that it is "just like Verizon's FX service." That is simply not true. These so-called "virtual FX" arrangements impose additional uncompensated transport costs on Verizon VA that its own FX service does not. Moreover, because they can disguise the jurisdiction of the call, the CLECs contend that they are entitled to reciprocal compensation for terminating virtual FX calls that are, in fact, toll calls. The Commission should make it clear that it will not condone numbering schemes designed to generate unjustified reciprocal compensation revenue for CLECs.

A. DISCUSSION

The Commission cannot allow the CLECs to continue a scheme whereby Verizon VA absorbs excessive transport costs and pays reciprocal compensation for originating virtual FX traffic.

1. Virtual FX Traffic Is Not The Same As FX Traffic.

Contrary to the claims of the Petitioners, Verizon's FX service is very different from the virtual FX arrangements that have been employed by CLECs.

Verizon VA offers FX service as a substitute for toll service for customers physically located outside of the exchange from which they want service. In order to avoid paying standard per minute charges on the interexchange (*i.e.*, toll) calls between the subscribing FX customer and a party in the foreign exchange, a dedicated transport facility is provisioned between the FX customer's location and the exchange switch from which it obtains FX service. The FX

customer pays for this dedicated transport facility and the foreign exchange switch costs as a substitute for paying the usage-based toll charges that would otherwise apply to these calls.[28]

The so-called virtual FX services offered by CLECs are typically very different. This point is graphically illustrated by the *Brooks* case in Maine, where the CLEC obtained more than fifty NXX codes for rate centers throughout the state in which it had no switch or facilities of any type, and in which none of its customers were actually located. WorldCom explained this practice in an *ex parte* letter filed with the Commission, dated April 20, 2000, in CC Docket No. 96-98:

> There are many reasons CLECs sometimes obtain NXXs but either do not use them (and their own switches) to provide service or use them (and their own switches) only to provide very limited service. For example:
>
> Frequently, in order to get extended "local call" coverage for ISP customers, CLECs will obtain NXXs in distant rate exchanges with the LATA to provision what is sometimes called "virtual FX service." For example, WorldCom has a single switch in Maine, located in Portland, but it has obtained 60 NXXs around the state so that its ISP customers can offer a "local dial-up" capability to their customers all around the state. Thus, WorldCom has NXXs in Bangor, but does not offer switched based services to Bangor customers.

In such a scenario, the assignment of NXXs associated with the rate center where the call originates serves to disguise the true nature of the call. The result is that the call is charged to the originating end user as if it were local (often at flat rate with no incremental call revenue), even though Verizon VA must deliver calls to these NXXs to the CLECs' facilities elsewhere in the state, often hundreds of miles away.[29] And it is Verizon VA that bears the cost of transporting

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[28] Tr. 1889-90.

[29] *See e.g.*, ATT Exh. 3 (LATA maps of AT&T switches in Virginia originally submitted as Exhibits DLT 8a-c to the Direct testimony of David Talbott).

the call to that distant location. The receiving CLEC, on the other hand, often has no facilities or costs to "provide" this virtual FX service, as its customers are collocated or located nearby the CLEC switch where the CLEC demands Verizon deliver the traffic. Thus, unlike FX service, the entire burden of providing virtual FX is forced on Verizon as the originating carrier with no compensation from anyone for these costs.

If Petitioners wish to offer this type of service, they should also assume financial responsibility for transporting the calls from the Verizon VA subscriber's local calling area to the CLECs' remote subscribers. A CLEC may satisfy this requirement either by having these calls delivered to it in the local calling area with which the NXX is associated or by paying Verizon VA for transport from that area to the CLEC's interconnection point. As explained below, this is so because traffic that does not originate and terminate in the same Local Calling Area is access traffic, not § 251(b)(5) reciprocal compensation traffic.

2. Virtual FX Traffic Does Not Fall Under The Umbrella Of § 251(b)(5).

The Commission could not have been clearer or more consistent in its holdings that the nature of a call is based on the end points of the communication.[30] The CLECs seek to avoid this rule of law merely by manipulating the telephone number assigned to the called party. The Commission must not allow them to do so.

As explained at the hearing, there is no difference between virtual FX calls and toll calls between the very same parties.[31] The only thing that changes are the numbers dialed by the

[30] *See ISP Remand Order* ¶ 14 ("the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end points of the communication") and ¶ 25 ("the Commission 'has historically been justified in relying on' end-to-end analysis for determining" the jurisdiction of a call) (*quoting Bell Atlantic*, 206 F.3d at 5).

[31] Tr. 1713-14.

calling party.[32] Under Verizon VA's Long Distance Services Tariff, either call is an intraLATA toll call originating in one Local Calling Area and terminating in another.[33] In spite of the fact that the CLECs have discovered a way to trick the end office switch, there is nothing "local" about these calls.[34] Rather, they are calls subject to Virginia intrastate access tariffs and not eligible for reciprocal compensation.

The Commission should reject the Petitioners' attempt to exploit the technical characteristic of an end office switch by manipulating NPA-NXX assignments. Rather than receiving an unfounded windfall in the form of reciprocal compensation for these calls, the Petitioners should either pay tariff access charges for calls to their virtual FX service or have these calls delivered to them in the local calling area associated with the NXX assigned to the virtual FX customer.[35]

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[32] Tr. 1720.

[33] This, of course, excludes calls to Internet Service Providers, which, by their nature, do not "terminate" in the Local Calling Area. Rather, they continue on to points unknown on the Internet. *ISP Remand Order* ¶¶ 58-60.

[34] *See ISP Remand Order* ¶ 34, note 66 ("we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations").

[35] The Petitioners have not suggested that the *ISP Remand Order* affected the existing access charge structure for toll calls to ISPs. Therefore, there appears to be no dispute that if a Verizon VA subscriber makes a 1+ call to an ISP, Verizon VA will not have to pay reciprocal compensation on that call.

Issue III-5 Tandem Versus End Office Switching Rate for Traffic Terminated on the CLEC Network

Neither AT&T nor WorldCom satisfied its obligation to show that its switches serve areas geographically comparable to the areas served by the Verizon VA tandem switches. As a result, neither is entitled to reciprocal compensation at the higher tandem rate.

In the *Local Competition Order*, the Commission ruled that: "Where the interconnecting carrier's switch ***serves*** a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate."[36] The Commission recently clarified this rule by stating that :

> a carrier ***demonstrating that its switch serves*** "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.[37]

The Commission could have -- ***but did not*** -- say that a carrier demonstrating that its switches ***are capable of serving*** a comparable geographic area is entitled to reciprocal compensation at the tandem rate. Thus, as a number of state commissions have found, the proper way to interpret this rule is that it requires a CLEC to demonstrate that its switches ***actually serve*** a geographic area comparable to the ILEC tandem.[38]

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[36] *Local Competition Order* ¶ 1090 (emphasis added); *see* Rule 51.711(a).

[37] *Intercarrier Compensation NPRM*, ¶ 105 (emphasis added).

[38] *See Texas Recip. Comp. Order* at 28-29; *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999) (the "rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve.") When read in conjunction with Issue I-6, the audacity of the CLECs' position on this issue becomes clear. AT&T and WorldCom seek reciprocal compensation on inbound virtual FX traffic at the tandem rate, based on the geographic scope their switches are purportedly capable of serving. Yet, they clearly do not have tandem-related switching or transport costs, as their virtual FX customers are most often collocated at the CLEC switch. *See* Verizon Ex. 3 at p. 8.

Maps and testimony about capacity may show the geographic areas a CLEC is willing to serve, but they do not provide enough information to make a reasonable determination as to whether the CLEC's switches serve customers in an area geographically comparable to the area served by the ILEC tandem. Therefore, the Petitioners have failed to satisfy their burden under the Commission's Rule 51.711(a) and are not entitled to reciprocal compensation at the higher tandem rate. Indeed, WorldCom has elsewhere conceded that the geography served by its switches may be very limited.[39]

[39] *See* WorldCom *ex parte* letter, dated April 20, 2000, filed in CC Docket No. 96-98 ("data offered by the ILECs is misleading and significantly overstates both the amount and the geographic breadth of facilities-based local services provided by CLECs.").

Issue IV-35 Reciprocal Compensation

Pursuant to the *ISP Remand Order,* traffic must meet two requirements to be eligible for reciprocal compensation. First, traffic must be telecommunications traffic that is not excepted from the scope of the reciprocal compensation provision by section 251(g). Second, traffic must originate on the network of one carrier and terminate on the network of another, per 47 CFR § 51.701(e). In Issue IV-35, WorldCom tries to revise the Commission's ruling on the first of these two prongs so that it can collect reciprocal compensation on information access traffic destined for non-ISP information service providers.[40] The Commission should reject WorldCom's attempt to rewrite applicable law.

The traffic for which WorldCom seeks reciprocal compensation is traffic to "information service providers" other than Internet Service Providers, such as "time and temperature information providers."[41] Section 251(g), however, lists "information access" and "exchange services for such access to . . . information service providers" among the categories of traffic excluded form § 251(b) reciprocal compensation requirements.[42] Contrary to WorldCom's suggestion, the Commission did not limit the scope of "information access" to ISP-bound traffic.[43] Rather, the Commission concluded that: "th[e] definition of 'information access' was meant to include all access traffic that was routed by a LEC 'to or from' providers of information

[40] *See* WorldCom Brief at 177.

[41] *Id.*

[42] 47 U.S.C. § 251(g); *see also ISP Remand Order* ¶ 34.

[43] *See* Tr. 1700.

services, of which ISPs are a subset."[44] Thus, a call to any information service provider is exempt from the reciprocal compensation requirements of § 251(b)(2).[45]

[44] *ISP Remand Order* ¶ 44.

[45] Verizon VA's witness, despite professing a lack of familiarity with the subject, was asked to opine whether the term "information access" included traffic other than ISP-bound traffic. Tr. 1778-81. He stated that he thought it did not. *Id.* The Commission's definition of the term "information access" in the *ISP Remand Order*, however, makes it clear that term does encompass more than ISP-bound traffic. *ISP Remand Order* ¶ 44.

Issues V-1 and V-8 Competitive Tandem Service

Verizon VA explained in its Brief why AT&T's proposed provisions for its competitive tandem service do not belong in the interconnection agreement.[46] Instead, if AT&T desires to provide such a service, it may already do so by obtaining service from Verizon VA's interstate access tariff. AT&T's attempt to avoid the access rates and instead pay TELRIC rates should be rejected, just as it has been rejected by the Commissions in New York and Indiana.[47] As the Eighth Circuit recognized in *CompTel,* § 251(g) of the Act "plainly preserves" the access regime that was in place prior to the Act. "In other words, the LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates."[48] Among the access services enumerated under § 251(g) are "exchange access" and "exchange services for such access to interexchange carriers."[49]

In the *CompTel* case, CompTel argued that ILECs should not be able "to charge different rates for the same service based on whether the carrier who is seeking interconnection and other network services is a long-distance service provider or a local service provider."[50] The Eighth Circuit rejected the challenge, noting that "the two kinds of carriers are not, in fact, seeking the same services. The IXC is seeking to use the incumbent LEC's network to route long-distance

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[46] Verizon VA Br. at IC-31-37.

[47] *See NY (AT&T/Verizon NY) Arbitration Order* at 39-40 ("[T]his proceeding and the new agreement concerns AT&T's local service interconnections with Verizon and not AT&T's competitive arrangements with other carriers. Accordingly, AT&T's access service language need not be included in the agreement."); *IN (AT&T/Ameritech) Arbitration Order* at 30 (this type of traffic "is not local, and thus is appropriately dealt with in federal and state access tariffs, not interconnection agreements.").

[48] 117 F.3d at 1072.

[49] 47 U.S.C. § 251(g).

[50] 117 F.3d at 1073.

calls and the newcomer LEC seeks use of the incumbent LEC's network in order to offer a competing local service."[51]

AT&T nonetheless asserts that it has the right "to obtain interconnection pursuant to § 251(c)(2) of the Act to provide local exchange *and exchange access* services."[52] But as this Commission and the 8th Circuit definitively held, section 251(c)(2) deals only with the "physical link" between two interconnecting networks.[53] The rate that applies to the exchange of traffic between networks is governed by other provisions – specifically, section 251(g) and (i) which preserve the pre-existing access charge regime under section 201.

Here, the fundamental problem with AT&T's argument is that it is proposing to **use** exchange access services that are provided by Verizon VA. The service AT&T wants to provide is one that allows an IXC to originate and terminate interexchange calls to **Verizon VA customers**. Because they remain Verizon VA customers, Verizon VA remains the carrier providing both the local exchange and exchange access service to those customers.

Indeed, as the 8th Circuit recognized, this is made clear by the terms of the Act.[54] "Telephone exchange service" is "service within a telephone exchange," *i.e.*, between two callers in the same local calling area. 47 U.S.C. § 153(47). "Exchange access" is "the *offering* of access to telephone exchange service or facilities for the purpose of the origination or termination" of toll calls that travel between different exchange areas. 47 U.S.C. § 153(48).

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[51] *Id.*

[52] AT&T Br. at 53 (emphasis in the originial).

[53] 117 F.3d at 1072. As the Commission explained, "interconnection pursuant to section 251(c)(2) is merely the physical linking of facilties between two networks, and thus access charges are not implicated by the Commission's decisions regarding whether parties who seek to interconnect solely for the purpose of originating or terminating interexchange traffic on the incumbent's network are entitled to obtain interconnection pursuant to section 251(c)(2)." *Local Competition Order* n. 398.

[54] 117 F.3d at 1071-72 & n.3.

When AT&T delivers long distance calls for completion over Verizon's local network to Verizon's local customers, it neither provides service within the local exchange nor "offe[rs] . . . access to telephone exchange services." To the contrary, it is Verizon that is providing local exchange service, and it is Verizon that is "offering" access to its "telephone exchange service or facilities." AT&T, in turn, is merely *using* Verizon's exchange access service and is therefore subject to the payment of appropriate access charges.

Moreover, AT&T acknowledges in its Brief that there would be technical problems with its proposal because Carrier Identification Code ("CIC") code billing detail would be lost when originating traffic is switched via two tandems.[55] AT&T claims, however, that there would not be two tandems involved because AT&T would connect directly with a Verizon end office.[56] As Verizon VA explained, that is not what AT&T's proposed contract language says; it would specifically require Verizon VA to provide "tandem switching."[57] Moreover, in a footnote to its brief, AT&T asserts that to make its proposal work, Verizon VA should be required to provide an option available in its access tariff – called Carrier Identification Parameter ("CIP") – that "is required to serve multiple IXC customers on a single trunk group."[58] AT&T's admission that it needs an option available under Verizon VA's access tariff is yet an additional demonstration that what AT&T wants is an access service.

For all of the reasons explained above, this Commission should reject AT&T's contract language for Competitive Tandem Service.

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[55] AT&T Br. at 55 ("because Verizon's tandem strips the Carrier Identification Code from the initial address message, the AT&T tandem would not receive the necessary billing detail.")

[56] *Id.*

[57] Verizon VA Br. at IC-36.

[58] Id. at n.193.